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JEFFREY BLUMENFELD
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July 24, 1998

VIA MESSENGER

Magalie Roman Salas, Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

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JUL 24 1998
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re CC Dockets No. 98-11, 98-26, 98-32, 98-91
Petitions for Section 706 Relief

Dear Ms. Salas:

Glenn Manishin, Christy Kunin and the undersigned, counsel for Rhythms NetConnections Inc. ("Rhythms"), met on Tuesday July 21 with James L. Casserly, Advisor to Commissioner Ness, and Kathryn C. Brown, Chief, Jordan B. Goldstein and Blaise Scinto, of the Common Carrier Bureau and on Thursday, July 23 with Thomas Power, Advisor to Chairman Kennard, to address the issues raised in the captioned proceedings under Section 706 of the Telecommunications Act of 1996. Rhythms' views are reflected in its prior comments in these dockets.

Pursuant to Section 1.1206 of the Commission's Rules, I have enclosed for filing seven copies of this letter and of a letter delivered today to Kathryn C. Brown. Please contact me should you have any questions in regard to this matter.

Sincerely,

Jeffrey Blumenfeld

JB:hs
cc: Robert M. Pepper, OPP
John T. Nakahata, Chief of Staff
James L. Casserly
Kyle Dixon
Paul Gallant
Kevin Martin
Paul Misener
Thomas Power
Kathryn C. Brown, Chief, CCB
Carol E. Mattey, Chief, Program & Policy Planning Div.
Linda Kinney, CCB

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VIA MESSENGER

Kathryn C. Brown, Chief
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re CC Dockets No. 98-11, 98-26, 98-32, 98-91
Petitions for Section 706 Relief

Dear Ms. Brown:

I am writing to follow up on the issues we discussed on Tuesday, July 21. If the Commission is inclined to grant some or all of the requested relief subject to conditions including the establishment of a separate subsidiary that must operate as a CLEC, the Commission must ensure that such conditions accomplish their purpose.

The procompetitive principle at the heart of the 1996 Act is parity. The principle is generally stated as "the ILECs must do for CLECs what it does for itself." The principle only creates parity, however, if it means that "the ILECs can only do for itself what it does for CLECs". [1] A requirement that the ILECs provide DSL service in a separate subsidiary in order to get the requested 706 relief [2] can be a meaningful tool in assuring parity of treatment if the separate subsidiary is required to be a CLEC that functions like any other CLEC, both in terms of

[1] While that may create parity, it may not create competition, if the ILEC is content not to provide the service itself.

[2] While separate subsidiaries make transactions between the entities more visible, there are both competitive and enforcement issues with the approach that require attention. Some of these concerns are described in pages 13 through 18 of the Reply Comments of the DSL Access Telecommunications Alliance ("DATA"), May 6, 1998.

certification, and in terms of its relation to the ILECs (including negotiating interconnection agreement and obtaining collocation and UNEs).

Equally important is the order in which these events occur. If the ability to obtain the requested 706 relief is to act as a meaningful incentive to the ILECs to make collocation, loops, and other UNEs available to its DSL competitors, the ILECs must satisfy those requirements before obtaining the relief. Once the ILECs have obtained relief, they have little reason – and less incentive – to improve their competitors' access to collocation and UNEs. In addition, once the ILECs obtain the requested relief, the FCC has little in the way of effective enforcement remedies available to ensure that CLECs obtain what they need to compete.

If the ILECs' "separate subsidiary CLEC" is simply handed all the DSL assets the ILEC has already put in place, the separate subsidiary CLEC requirement will have little practical effect. For example, many ILECs have already deployed DSL equipment in some or all of the central offices from which they want to provide service, while denying collocation to one or more of their DSL competitors at the same central offices. If these ILECs can simply "spin off" these facilities to their newly-created separate subsidiaries free of the Telecommunications Act's procompetitive obligations, then those subsidiaries have significant advantages over real CLECs, both in speed to market and in access to central offices that are "off limits" to competitors. To address this issue, the Commission must ensure that the separate subsidiary CLEC not be granted relief from the Act's requirements until the DSL CLECs have collocation and unbundled loops that enable them to compete on an equal footing.

Similarly, if the ILEC elects to provide its DSL service as currently configured, while the service would still be subject to the procompetitive obligations of the Telecommunications Act, the ILEC could maintain its significant anticompetitive advantages, including both in speed to market and in access to central offices that are "off limits" to competitors. Therefore, the FCC should consider requiring all ILECs to provide DSL services only through separate subsidiaries operating as CLECs.

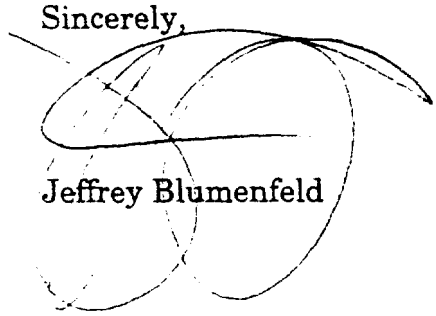
The Commission must also be concerned that ILECs may be willing to accept significant limitations on their own DSL service offerings (whether or not offered by a separate subsidiary CLEC) in order to "justify" imposing such limitations on DSL competitors. This could be the case if ILECs decide that the net effect of DSL offerings in their territory – whether by themselves or by competitors – would reduce their current revenues from data services.

Because DSL services are the prime example of new services, enabled by the procompetitive mandates of the Telecommunications Act, the Commission must ensure that the current pace at which competitors are rolling out these services – a pace currently limited only by ILEC refusals to make collocation and/or loops available to CLECs – is not further retarded by the ILECs. To accomplish this, the Commission must ensure that the ILECs have satisfied their Telecommunications Act obligations before granting them their requested relief, in addition to any safeguards (including separate subsidiaries operating as CLECs) the Commission

imposes. Most of what DSL competitors need is provided for in existing FCC orders, but the "real world" implementation routinely falls short of the goal of allowing CLECs to provide services unimpeded by the ILECs desire and ability to forestall competition. The attached material summarizes some of the improvements that, if implemented, will increase the availability and variety of data services to consumers.

Pursuant to Section 1.1206 of the Commission's Rules, seven copies of this letter have been provided to the Secretary for filing.

Sincerely,



Jeffrey Blumenfeld

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Linda Kinney, CCB

1. Physical collocation space must be available to data CLECs
- competitors frequently excluded, including offices where ILECs offering DSL
- if there is room for ILEC equip, there is room for CLEC equipment
- CLECs must be able to service own equipment in all varieties of collocation

2. CLECs should have equal priority to ILECs in collocation
- ILECs read "first come first served" as "me first, you last"
- central office space is being "reserved for future ILEC use" or is being used for administrative purposes

3. Alternative collocation arrangements must be permitted
- must allow data CLECs access over copper to unbundled loops, even where "no space" in central offices

4. Construction costs must be reasonable
- currently range from $30K to > $100K for collocation
- not just issue of "cage" v "cageless"
- our analysis shows similarly equipped virtual collocation space costs more than physical collocation space

5. Collocation "preparation" fees must be abolished
- range from $65K to $220K over and above cost for actual collocation

6. Intervals for collocation and UNEs must be reasonable and shorter
- "stated" intervals understate reality
- 90 to 120 days frequently cited by regulators is not reality
- application+response+construction = 6 to 10 months in reality
- construction frequently late, extending interval even further
- intervals are often in "business days"
  120 "days" = 4 months
  120 "business days" = 6 months

7. Copper loops are mandatory for DSL
- copper loops must be made available to data CLECs on request
- facilities rearrangements, routine for ILEC services, must be done when needed
- e.g., voice customers can be rearranged from copper to DLC, freeing copper loops

8. DLC equipment vaults (RTs, SAIs, etc) must be made available
- DSL service requires access to copper loops
- must be available on equal basis to all providers
- ILECs cannot be allowed to fill these themselves and exclude competitors

9. ILECs cannot refuse to make loops available based on unilateral criteria
- any "standards" must be negotiated among all providers and manufacturers on equal footing, so no one provider or technology can dictate the market